

## § 10.6

## 44 CFR Ch. I (10–1–04 Edition)

(d) *The Office of General Counsel of FEMA shall:*

(1) Provide advice and assistance concerning the requirements of this part;

(2) Review all proposed changes or additions to the list of categorical exclusions;

(3) Review all findings of no significant impact; and

(4) Review all proposed draft and final environmental impact statements.

[45 FR 41142, June 18, 1980, as amended at 47 FR 13149, Mar. 29, 1982]

### § 10.6 Making or amending policy.

For all regulations, procedures, or other issuances making or amending policy, the head of the FEMA office or administration establishing such policy shall be responsible for application of this part to that action. This does not apply to actions categorically excluded. For all policy-making actions not categorically excluded, the head of the office or administration shall comply with the requirements of this part. Thus, for such actions, the office or administration head shall assume the responsibilities that a Regional Director assumes for a FEMA action in his/her respective region. For such policy-making actions taken by the Director of FEMA, the Environmental Officer shall assume the responsibilities that a Regional Director assumes for a FEMA action in his/her respective region.

[45 FR 41142, June 18, 1980, as amended at 47 FR 13149, Mar. 29, 1982]

### § 10.7 Planning.

(a) *Early planning.* The Regional Director shall integrate the NEPA process with other planning at the earliest possible time to ensure that planning decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts.

(b) *Lead agency.* To determine the lead agency for policy-making in which more than one FEMA office or administration is involved or any action in which another Federal agency is involved, FEMA offices and administrations shall apply criteria defined in § 1501.5 of the CEQ regulation. If there is disagreement, the FEMA offices and/or administrations shall forward a re-

quest for lead agency determination to the Environmental Officer;

(1) The Environmental Officer will determine lead agency responsibility among FEMA offices and administration.

(2) In those cases involving a FEMA office or administration and another Federal agency, the Environmental Officer will attempt to resolve the differences. If unsuccessful, the Environmental Officer will file the request with the Council on Environmental Quality for determination.

(c) *Technical assistance to applicants.*

(1) Section 1501.2(d) of the CEQ regulations requires agencies to provide for early involvement in actions which, while planned by private applicants or other non-Federal entities, require some form of Federal approval. To implement the requirements of § 1501.2(d),

(i) The heads of the FEMA offices and administration shall prepare where practicable, generic guidelines describing the scope and level of environmental information required from applicants as a basis for evaluating their proposed actions, and make these guidelines available upon request.

(ii) The Regional Director shall provide such guidance on a project-by-project basis to applicants seeking assistance from FEMA.

(iii) Upon receipt of an application for agency approval, or notification that an application will be filed, the Regional Director shall consult as required with other appropriate parties to initiate and coordinate the necessary environmental analyses.

(2) To facilitate compliance with the requirements of paragraph (a) of this section, applicants and other non-Federal entities are expected to:

(i) Contact the Regional Director as early as possible in the planning process for guidance on the scope and level of environmental information required to be submitted in support of their application;

(ii) Conduct any studies which are deemed necessary and appropriate by FEMA to determine the impact of the proposed action on the human environment;

(iii) Consult with appropriate Federal, regional, State, and local agencies

and other potentially interested parties during preliminary planning stages to ensure that all environmental factors are identified;

(iv) Submit applications for all Federal, regional, State, and local approvals as early as possible in the planning process;

(v) Notify the Regional Director as early as possible of all other Federal, regional, State, local, and Indian tribe actions required for project completion so that FEMA may coordinate all Federal environmental reviews; and

(vi) Notify the Regional Director of all known parties potentially affected by or interested in the proposed action.

[45 FR 41142, June 18, 1980, as amended at 47 FR 13149, Mar. 29, 1982]

#### § 10.8 Determination of requirement for environmental review.

The first step in applying the NEPA process is to determine whether to prepare an environmental assessment or an environmental impact statement. Early determination will help ensure that necessary environmental documentation is prepared and integrated into the decision-making process. Environmental impact statements will be prepared for all major Agency actions (see 40 CFR 1508.18) significantly (see 40 CFR 1508.27) affecting the quality of the human environment.

(a) In determining whether to prepare an environmental impact statement (EIS) the Regional Director will first determine whether the proposal is one which:

(1) Normally requires an environmental impact statement; or

(2) Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion).

(b) *Actions that normally require an EIS.* (1) In some cases, it will be readily apparent that a proposed action will have significant impact on the environment. In that event, the Regional Director will, pursuant to § 10.9(g) of this part, submit the notice of preparation of an environmental impact statement to the Environmental Officer.

(2) To assist in determining those actions that normally do require an environmental impact statement, the following criteria apply:

(i) If an action will result in an extensive change in land use or the commitment of a large amount of land;

(ii) If an action will result in a land use change which is incompatible with the existing or planned land use of the surrounding area;

(iii) If many people will be affected;

(iv) If the environmental impact of the project is likely to be controversial;

(v) If an action will affect, in large measure, wildlife populations and their habitats, important natural resources, floodplains, wetlands, estuaries, beaches, dunes, unstable soils, steep slopes, aquifer recharge areas, or delicate or rare ecosystems, including endangered species;

(vi) If an action will result in a major adverse impact upon air or water quality;

(vii) If an action will adversely affect a property listed on the National Register of Historic Places or eligible for listing on the Register if, after consultation with the Advisory Council on Historic Preservation an environmental assessment is not deemed sufficient;

(viii) If an action is one of several actions underway or planned for an area and the cumulative impact of these projects is considered significant in terms of the above criteria;

(ix) If an action holds potential for threat or hazard to the public; or

(x) If an action is similar to previous actions determined to require an environmental impact statement.

(3) In any case involving an action that normally does require an environmental impact statement, the Regional Director may prepare an environmental assessment to determine if an environmental impact statement is required.

(c) *Statutory exclusions.* The following actions are statutorily excluded from NEPA and the preparation of environmental impact statements and environmental assessments by section 316 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), as amended, 42 U.S.C. 5159;

(1) Action taken or assistance provided under sections 402, 403, 407, or 502 of the Stafford Act; and